

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII

CHAPTER 178

LAND REFORM PROGRAM

Subchapter 1 General Provisions

\$15-178-1	Purpose and applicability
\$15-178-2	Definitions
\$15-178-3	Public information

Subchapter 2 Application, Negotiation and
Designation

\$15-178-11	Designation initiated by lessees
\$15-178-12	Analysis and reply
\$15-178-13	Boundaries of development tract
\$15-178-14	Designation initiated by corporation
\$15-178-15	Notice, hearings and findings
\$15-178-16	Negotiation
\$15-178-17	Financial qualification
\$15-178-18	General qualification requirements
\$15-178-19	Additional deposit
\$15-178-20	Title search
\$15-178-21	Designation

Subchapter 3 Condemnation, Acquisition and
Disposition

\$15-178-31	Ineligibility and disqualification
\$15-178-32	Withdrawal from participation
\$15-178-33	Substitution of applicants
\$15-178-34	Submission of cost expenditures by fee owners

§15-178-35	Appraisal fee
§15-178-36	Disposition; purchase of fee interest by lessee
§15-178-37	Disposition; purchase of fee interest by corporation
§15-178-38	Sales price

Subchapter 4 Miscellaneous Provisions

§15-178-41	Zoning changes
§15-178-42	Investigations

Historical note: Chapter 15-178, Hawaii Administrative Rules, is based substantially upon chapter 6-385, Hawaii Administrative Rules.

[Eff 8/25/90; R **OCT 25 1999**]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-178-1 Purpose and applicability. This chapter is adopted pursuant to chapter 91, HRS, and implements chapter 516, HRS, which applies to all leasehold residential lots owned or held privately, or owned by the State or by the counties. Certain Hawaiian home lands and lands owned or held by the federal government are excluded. [Eff **OCT 25 1999**] (Auth: HRS §§516-7, 516-33) (Imp: HRS §§516-2, 516-6, 516-7, 516-21)

§15-178-2 Definitions. Unless otherwise clear from the context or unless further defined herein, the definitions of terms in chapter 516, HRS, shall be applicable to this chapter. As used in this chapter:

"Additional deposit" means one or more additional deposits of not less than \$500, which shall be used to pay for administrative costs and tract costs not covered by the initial deposit. Such a deposit may be collected in advance if the projected costs exceed the initial deposit.

"Administrative costs" means costs incurred by the corporation for activities performed in conjunction

with the designation, condemnation, acquisition and disposition of the leased fee interest in residential lots. Such costs may include but are not limited to allocated (indirect) costs, including general administrative salaries, general employee benefits, general legal services and other general operating expenses, such as office rent and equipment charges.

"Corporation" means the housing and community development corporation of Hawaii created under chapter 201G, HRS.

"Executive director" means the executive director employed by the corporation or the executive director's designated representative.

"Initial deposit" means a fee of not less than \$1,000 assessed to all lessees applying to purchase the leased fee interest in their respective residential houselots. The initial deposit, which may also be referred to as an application fee, shall be used to cover administrative costs and tract costs.

"Lessor" means the fee simple owner, and legal and equitable owners who lease or sublease land to another and their heirs, successors, legal representatives, and assigns.

"Lessor's costs" means actual out-of-pocket expenses of appraisal, survey, and attorney fees that the owner, the lessor and the legal and equitable owners of the land designated for acquisition may have incurred as a result of the designation.

"Qualified lessee" means a person who has applied, petitioned, and qualified for the designation and condemnation of the person's leasehold lot and who has executed a contract to purchase with the corporation.

"Substituting lessee" means a person who substitutes the person's self for the original applicant subject to outright purchase or by an agreement of sale pursuant to the consent of the substitution by the executive director.

"Tract costs" means direct costs incurred by a particular development tract in conjunction with the designation, condemnation, acquisition and disposition of the leased fee interest in the residential lots of the tract. Such costs may include but are not limited to costs of administrative salaries for direct time spent on a particular tract by the corporation's personnel, appraisals, attorney's fees, public hearing expenses, escrow fees, and title reports.

[Eff **OCT 25 1999** (Auth: §§516-7, 516-33) (Imp: HRS

§§516-2, 516-6, 516-7, 516-33.5)

§15-178-3 Public information. The executive director shall disseminate information and render assistance to lessees of residential lots in order that chapter 516, HRS, may be understood and effectively implemented. The executive director may use available news media to implement this section.

[Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-7)

SUBCHAPTER 2

APPLICATION, NEGOTIATION AND DESIGNATION

§15-178-11 Designation initiated by lessees. (a) The lessees of residential lots in any qualified development tract may request designation of that development tract for acquisition, in whole or part, as provided in this section.

(b) The lessees desiring to acquire the leased fee interests in their residential lots shall initially determine whether chapter 516, HRS, applies to their development tract. The lessees may submit their findings to the executive director prior to formal application, and the executive director may provide a preliminary determination as to tract qualification.

(c) The lessees shall submit to the executive director a request for designation of the development tract on a form provided by the executive director.

(1) The request for designation shall contain sufficient information to identify the development tract and the fee owners thereof. Each request for designation shall have attached a tax map showing the development tract and the residential lots of the lessees requesting designation;

(2) Each lessee requesting designation of the development tract shall sign a signature sheet which will be attached to the request for designation and which sufficiently identifies the lessee's lot. The signature of each requesting lessee shall constitute a certification that the lessee has read,

understood and agreed to or with all representations, covenants, and statements of consequence contained in the request for designation.

(d) Together with the request for designation, each lessee requesting designation shall submit to the corporation an application to purchase the leased fee interest in his or her leasehold lot on a form provided by the corporation.

- (1) The application to purchase shall identify the particular residential leasehold lot for which the lessee desires to purchase the leased fee interest and shall have attached thereto a copy of the original lease and any amendments thereto to that lot;
- (2) Each lessee desiring a designation of a lot shall submit a separate application to purchase the lessee's lot. All lessees named on a lease to a lot must complete an application to purchase either individually or jointly;
- (3) The lessees submitting the application to purchase shall agree to and comply with the requirements and the statements contained in the application. Each application to purchase shall be signed and sworn to by the lessees submitting the application to purchase and shall be notarized;
- (4) The application to purchase shall be submitted with a cashier's or certified check in the amount of \$1,000 as an initial deposit. Any interest accrued on the initial deposit may be withdrawn at the written request of the lessee provided there are sufficient funds remaining on deposit for the lessee to cover the administrative and tract costs. A reasonable service charge shall be assessed for each interest withdrawal transaction;
- (5) Thereafter, in addition to the initial deposit, each lessee may be required to submit an additional deposit, which shall be used to pay for administrative costs and tract costs not covered by the initial deposit. The additional deposit may be collected in advance if the projected administrative and tract costs exceed the

initial deposit [Eff **OCT 25 1999**]
(Auth: HRS §§516-7, 516-33) (Imp: HRS §§516-7, 516-22, 516-33, 516-33.5)

§15-178-12 Analysis and reply. (a) The executive director shall review the lessees' request for designation and shall report to the corporation on the feasibility of such designation. Within ninety days after receipt of a request for designation and all required accompanying documents and initial deposit, the executive director shall inform the lessees' representative of the preliminary determination of the feasibility of designation and shall inform the lessees when a public hearing will be scheduled pursuant to section 15-178-15.

(b) The executive director shall review each lessee's application to purchase and all accompanying forms. If the executive director makes a preliminary determination that a lessee is not financially or otherwise qualified to participate in the designation, the executive director shall so notify the lessee within ninety calendar days, and shall return the lessee's application to purchase. [Eff **OCT 25 1999**]
(Auth: HRS §§516-7, 516-33) (Imp: HRS §§516-6, 516-22, 516-33)

§15-178-13 Boundaries of development tract. The corporation shall make the final determination of the boundaries of a development tract and when requested by lessees to designate a particular area as such, may change and revise the boundaries in any manner which it considers to be most feasible, and its decisions shall be final. [Eff **OCT 25 1999**] (Auth: HRS §516-7)
(Imp: HRS §§516-6, 516-22)

§15-178-14 Designation initiated by corporation. The corporation, on its own initiative, may designate a development tract for acquisition through the procedures specified in sections 15-178-15 to 15-178-20. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-22)

§15-178-15 Notice, hearings and findings. The

corporation shall designate all or a portion of a development tract by the resolution duly adopted by the corporation. Prior to adoption of the resolution:

- (1) The corporation shall give notice of the proposed designation by publication of the resolution and of the time and place of the public hearing scheduled to be held on the proposed designation, in a newspaper of general circulation in the county in which the development tract is situated, on at least three different days, the last publication being not less than five days before the hearing. Notice shall be given by mail to those persons, at their last recorded address, who have made a prior written request for such notice by mail;
- (2) The public hearing shall be held in the county in which the development tract is situated. All interested persons shall be afforded the opportunity to submit data, views, or arguments for or against the proposed designation, orally or in writing. Written submissions may be made to the executive director prior to or during the public hearing, without the necessity of oral presentations. [Eff OCT 25 1999] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-22)

§15-178-16 Negotiation. (a) After the public hearing, and if there is a finding that the designation will effectuate the public purpose of chapter 516, the corporation shall request the lessor and lessees, or their designated agents, to negotiate the just compensation which the lessees will pay the lessor to acquire all or part of the subject development tract under consideration.

(b) Negotiations shall end sixty calendar days from the date the corporation requests negotiations to begin. If no agreement is reached within the sixty day period, the executive director may:

- (1) Extend the negotiation period by not more than sixty additional calendar days with the concurrence of the lessees and lessor;
- (2) Call a final negotiation meeting in which there shall be a simultaneous exchange of final offers together with any appraisals,

other documents, and any expert opinions on which their negotiating positions were based. Violation or noncompliance with this paragraph shall be cause to institute provisions as prescribed by section 15-178-42; or both.

(c) If after the final negotiation meeting described in subsection (b)(2) or at the end of the negotiation period, no agreement is reached, the parties shall submit to the executive director copies of final offers and related documents. The executive director may use the information in determining prior to commencing condemnation proceedings, the qualification amounts for each of the lots.

[Eff **OCT 2 1977**] (Auth: HRS \$516-7) (Imp: HRS \$516-5, 516-6, 516-51, 516-68)

\$15-178-17 Financial qualification. (a) After the setting of the qualification amounts, the corporation shall give each lessee who has submitted an application to purchase a notice by certified mail, sent to the lessee's last known address, informing the lessee of the qualification amount for the lot and requesting that the lessee submit the following financial information;

- (1) An accurate and updated financial statement; and
- (2) A true and correct copy of a letter of credit, certificate of deposit, proof of funds, or loan commitment letter demonstrating that the lessee is able to pay the qualification amount.

Evidence of other assets such as precious metals, coins, jewelry, stocks, bonds, etc., may be acceptable as proof of funds provided that verification is made and attested to by, a qualified independent financial officer, broker, appraiser, etc.

(b) The lessee shall comply with the requirements of subsection (a) within sixty days from the date of notice.

(c) Failure of a lessee to submit the required documentation shall make the lessee's application defective, thereby precluding the lessee from proceeding with designation of the lessee's lot as described in paragraph 15-178-21(1).

(d) If after first designation, a lessee is then

able to submit the required documentation within sixty calendar days after the date of first designation, the lessee's lot may be designated as described in subparagraph 15-178-21(4)(A).

(e) Proof of funds may be waived in instances where a settlement has been reached for a development tract and financing for the fee purchase is to be provided by the lessor. All parties involved must agree to forego the proof of funds in these types of situations. The lessor, however, shall be required to submit a listing of all lessees to whom financing will be committed. Any lessee who does not qualify for lessor financing shall be required to submit proof of funds as cited in subsection (a). [Eff. **OCT 25 1999**]
(Auth: HRS §516-7) (Imp: HRS §§516-6, 516-7)

§15-178-18 General qualification requirements.

(a) In addition to financial qualification, each lessee shall demonstrate the ability to meet the following requirements at the time of application and at the time of purchase, as required by section 516-33, HRS:

- (1) The applicant shall either have legal title to the property or shall have an equitable interest in the residential structure as the vendee under an agreement of sale;
- (2) The applicant shall be at least eighteen years of age;
- (3) The applicant shall be a bonafide resident of the State of Hawaii and reside on the lot, except in hardship circumstances as determined by the corporation on a case by case basis;
- (4) The applicant shall not own in fee simple land suitable for residential purposes within the county and in or reasonably near the place of employment or business of the applicant. A husband and wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be considered jointly in owning fee simple land. Provided that whenever any of the applicants on title to the subject lot owns other fee simple land(s) suitable for residential purposes in the county but is on title to the subject lot

solely for purposes of mortgage financing as co-mortgagor and co-owner, such applicant shall not cause the disqualification of the subject lot for lease to fee conversion.

Applicants who claim an exemption under this subpart shall comply with the following:

- (A) the applicant must provide a letter from a mortgage lender attesting to the necessity of having such co-mortgagor/co-owner on leasehold title for mortgage purposes; and
- (B) the co-mortgagor/co-owner under this sub-part shall sign an affidavit that he/she appears on title as co-owner only for financing purposes as co-mortgagor and does not reside or intend to reside at the leasehold property applied for;
- (5) The applicant shall not have pending before the corporation an unrefused application to lease or purchase a residential lot. A husband and wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be entitled to purchase only one lot under this chapter; and
- (6) The applicant shall submit to the executive director copies of any mortgage or other encumbrance on the house and lot and shall provide any other information requested by the executive director in connection with the application. [Eff **OCT 25 1999**] (Auth: HRS §§516-7, 516-33) (Imp: HRS §516-7, 516-28, 516-33)

§15-178-19 Additional deposit. Along with financial information set forth in section 15-178-17, a lessee may be required to submit an additional deposit of not less than \$500, as defined in section 15-178-2. Failure to submit a required deposit shall preclude a lessee from proceeding with designation.

[Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §516-33.5)

§15-178-20 Title search. The executive director may request a title search to be made prior to

designation of specific lots within the tract for acquisition. [Eff **OCT 25 1999**] (Auth: HRS §516-7)
(Imp: HRS §§516-6, 516-7)

§15-178-21 Designation. The corporation may designate all or a portion of the development tract for acquisition pursuant to section 516-22, HRS, upon the following conditions:

- (1) A designation shall be made by resolution duly adopted by the corporation, which resolution shall state the corporation's findings and shall identify the residential leasehold lots for which the corporation intends to acquire the leased fee interest;
- (2) The corporation's determination to designate individual residential leasehold lots within a development tract shall take into consideration all qualification requirements and shall not be based solely upon the request for designation;
- (3) Upon designation, the executive director shall mail a copy of the resolution to the fee owner and the representative of the lessees of the development tract, if any, and to those persons who have made prior written request for notice (at their last recorded address); and a copy of the resolution shall be published once in a newspaper or general circulation in the county in which the development tract is situated;
- (4) Amendments to the designation resolution may be adopted by the corporation as follows:
 - (A) In a development tract being contested by the lessor, a lessee shall have sixty calendar days from the adoption date of the first designation resolution to meet the qualification requirements and be subsequently designated. Lessees who fail to meet the qualification requirements within the sixty calendar day period following date of first designation shall not be permitted to join the eminent domain proceedings unless and until said lessee has complied with the executive director's request; and

- (B) Where the lessor and lessee agree to additional designations, additional resolutions designating additional leasehold lots for acquisition may be adopted by the corporation provided that the lessees have applied and have been preliminarily qualified.
[Eff. **OCT 25 1999**] (Auth: HRS §516-7)
(Imp: HRS §§516-6, 516-7, 516-22)

SUBCHAPTER 3

CONDEMNATION, ACQUISITION AND DISPOSITION

§15-178-31 Ineligibility and disqualification.

(a) Prior to designation, if the executive director makes a preliminary determination that an applicant does not qualify to purchase or lease under chapter 516, HRS, the executive director shall send a written notification of that determination to the applicant at the applicant's last known address. The written notification shall state the requirements that the applicant has failed to meet and any other reason the applicant does not qualify as determined by the executive director.

(b) If the applicant so notified desires to contest the executive director's determination, the applicant, within sixteen calendar days after the date the notification is mailed, shall file with the corporation a written request for reconsideration with a written statement of the reasons the applicant believes that the executive director's determination is incorrect. Final determination of the request for reconsideration may be made by the corporation prior to or at its meeting on the resolution for designation. Any request for reconsideration which has been filed in a timely manner shall be heard pursuant to chapter 15-160, Hawaii Administrative Rules, and chapter 91, HRS.

(c) The applicant who is ruled ineligible and who is disqualified from purchasing shall pay to the corporation a pro rata share of all costs incurred up to the date of the applicant's disqualification.
[Eff. **OCT 25 1999**] (Auth: HRS §§516-7, 516-33) (Imp: HRS §§516-6, 516-7, 516-33)

§15-178-32 Withdrawal from participation. (a)

If, after application for purchase but prior to designation for acquisition, any lessee withdraws the lessee's application, the corporation shall be entitled to deduct actual pro rata share of administrative costs and tract costs from the initial deposit and additional deposit made pursuant to section 516-33.5, HRS, and section 15-178-11.

(b) If, after the designation for acquisition but prior to acquisition of the leased fee interest by the corporation, any lessee who has applied to purchase the leased fee interest in the lessee's residential lot withdraws the application, or fails or refuses to pay such reasonable fees assessed by the executive director for the services of appraisers, or otherwise breaches or violates the provision and covenants of the request for designation or of the application to purchase, the corporation, at its option, may cease all efforts to acquire the leased fee interest in that lessee's residential lot and the lessee shall pay to the corporation the lessee's pro rata share of all administrative and tract costs incurred in the designation and subsequent efforts to acquire the leased fee interest in the residential lot.

(c) Failure by the lessee to close escrow within thirty calendar days after the expiration of the sixty calendar day period set forth in section 516-30, HRS, shall constitute a failure to purchase and the lessee shall be responsible for all costs and fees as set forth in subsection (b).

(d) The executive director may take whatever action the executive director deems necessary to collect the costs and fees set forth in this section from the lessee, including the automatic deductions of the costs and fees from the initial deposit and additional deposit made by the lessee in accordance with section 15-178-11.

(e) If, after designation or the filing of the condemnation complaint, a lessee withdraws the lessee's lot from the condemnation action or fails to purchase the leased fee interest to the lot, the lessee is liable for the lessee's pro rata share of costs as set forth in sections 516-23 or 516-30, HRS.

[Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-7, 516-23, 516-30)

\$15-178-33 Substitution of applicants. (a) A substituting lessee may take the place of a withdrawing lessee provided that the substituting lessee meets all of the qualification requirements stated in section 15-178-18, and submits the financial information called for in section 15-178-16.

(b) The substituting lessee shall submit to the executive director a request for substitution. The executive director shall make a preliminary determination of the applicant's qualification to be substituted as a lessee.

(c) The lessee who is being substituted shall assign all title, rights and interest under the application to the substituting lessee. The substituting lessee shall assume all liabilities of the withdrawing lessee.

(d) The substituting lessee shall assume all responsibility for obtaining approval of the court for substitution into the condemnation action.

[Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-7, 516-63)

\$15-178-34 Submission of cost expenditures by fee owners. (a) Subsequent to the designation, the fee owner, lessor and the legal and equitable owners of the lots condemned by the corporation, shall maintain and submit to the corporation a quarterly report on the costs incurred or expended. This quarterly report shall be submitted within thirty calendar days following the end of each quarter involved, and shall be used for the purpose of determining pro rata costs of each lot in the event it is withdrawn from the condemnation action.

(b) The initial quarterly report shall consist of costs incurred or expended during the month of designation, as well as during the three calendar months following. Thereafter, three calendar months shall constitute a quarter.

(c) Such reports shall also be updated from time to time upon the dismissal of a lot and lessees from the condemnation action. The update to the date of dismissal shall be submitted to the corporation within thirty calendar days after notification of the dismissal.

(d) Failure to submit the expenditure report as prescribed will be grounds for disallowing the same

unless the delay is consented to by the corporation for good cause shown.

(e) Costs expenditure submitted shall be subject to review and approval of the corporation or the courts in case of disagreement. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-7, 516-30)

§15-178-35 Appraisal fee. (a) The executive director may assess and collect from the lessees who have indicated a desire to acquire the leased fee interest in their residential lots an amount reasonably necessary for the services of an appraiser or appraisers contracted by the executive director to determine the owner's basis of the leased fee interest to be acquired. The appraisal fee shall be included in the initial deposit and additional deposit required by section 516-33.5, HRS, and section 15-178-11.

(b) Each lessee failing to pay any fee assessed in subsection (a) within thirty calendar days after written notice to pay such fee may be prohibited from acquiring the leased fee interest of the lessee's lot pursuant to chapter 516, HRS. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §516-7)

§15-178-36 Disposition; purchase of fee interest by lessee. The lessee shall purchase the fee interest of the lessee's leasehold lot within sixty calendar days of the acquisition of the interest by the corporation pursuant to the contract to purchase. The lessee, however, shall not be in default in the performance of the lease obligation. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §516-30)

§15-178-37 Disposition; purchase of fee interest by the corporation. (a) Upon acquisition of the fee interest in leasehold lots of a development tract, the corporation shall sell the fee interest to the lessees of the leasehold lots as prescribed in section 15-178-36.

(b) If the lessee fails to purchase the fee interest, the corporation may lease the acquired residential lot for periods of twenty years or less to the lessee at a lease rental rate sufficient to pay for the principal and interest on bonds issued, or for

other financing, for the purpose of this chapter, as well as expenses incurred in administering chapter 516, HRS. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-29, 516-30, 516-31, 516-32)

§15-178-38 Sales price. (a) The sales price of the leased fee interest in a residential lot to the lessee of the lot shall be that amount of money that will enable the corporation to recover the total cost of acquiring the lot.

(b) The total cost of acquisition shall include:

- (1) The actual cost of acquisition determined by negotiation or by eminent domain proceedings;
- (2) Any and all court costs;
- (3) The cost of appraisal not previously paid for pursuant to section 15-178-35;
- (4) The corporation's administrative costs and any other tract costs;
- (5) An amount sufficient to pay the principal and interest on bonds issued or to be issued, or other financing, for the purpose of carrying out chapter 516, HRS; and
- (6) An amount sufficient to create and maintain a reserve to enable the corporation to make the largest amount of principal and interest payments which may be due on such bonds in any one year.

(c) Any unused balance of the initial deposit and additional deposit paid to the corporation by a lessee shall be credited to the sales price of the residential lot of the lessee.

(d) The executive director may take whatever action the executive director deems necessary to collect the costs and fees set forth in this section from the lessee, including the automatic deductions of the costs and fees from the initial deposit and [earnest money deposit] additional deposit made by the lessee in accordance with section 15-178-11.

[Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-1, 516-7, 516-24, 516-26, 516-30, 516-32)

SUBCHAPTER 4

MISCELLANEOUS PROVISIONS

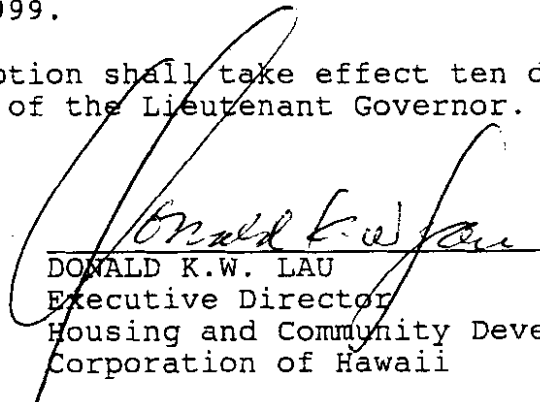
\$15-178-41 Zoning changes. All lessors shall notify their lessees when applying for a change in zoning if the lessees reside within three-fourths mile of the land proposed to be rezoned. Notice to the lessees shall be in writing or published in a newspaper of general circulation at least thirty calendar days before filing the rezoning application with the appropriate public zoning authority. A copy of the notice shall be submitted to the corporation at the time of mailing to the lessees or publication. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-67)

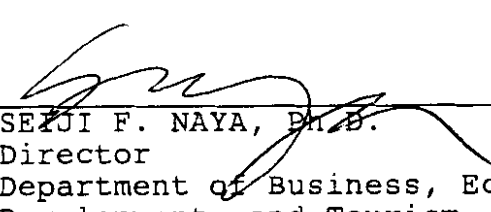
\$15-178-42 Investigations. The executive director may conduct an investigation or investigate a written complaint when it appears chapter 516, HRS, or these rules are being violated. [Eff **OCT 25 1999**] (Auth: HRS §516-7) (Imp: HRS §§516-6, 516-7)

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,
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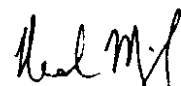
The repeal of chapter 6-385 and the adoption of chapter 15-178, Hawaii Administrative Rules, on the Summary Page dated August 27, 1999, was adopted on August 27, 1999, following public hearings held on Maui on July 15, 1999, Hilo on July 16, 1999, Oahu on July 19, 1999, and Kauai on July 20, 1999, after public notice was given in the Midweek newspaper on June 7, 1999.

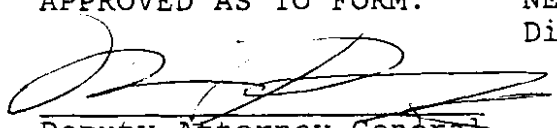
The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.


DONALD K.W. LAU
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Dated: 10-14-99

OCT 15 1999

Filed

LIEUTENANT GOVERNOR'S
OFFICE

'99 OCT 15 P2:08